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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,147	12/07/2001	Frank Blecha	23625-DIV1	7389

7590 09/16/2004
Tracey S. Truitt
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EXAMINER

LUKTON, DAVID

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/014,147	BLECHA ET AL.	
	Examiner	Art Unit	
	David Lukton	1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicants' election of Group 1 (claims 1-8) is acknowledged, as are the elected species (SEQ ID NO:1 as the peptide, neutrophil as the type of leukocyte, and endothelium as the location to which the leukocyte is attracted).



Claims 1-8 are rejected under 35 U.S.C. §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 1 recites "capable of attracting", thus rendering the claims indefinite as to whether the attraction ever takes place. A related matter concerns the "location". Suppose that the "location" is a given position in a petri dish. Can a leukocyte be attracted to the position in the petri dish if no leukocyte is present in the dish?
- In claim 2, the phrase "Sequence ID No. 1" is used. The "No" should be followed by a colon, rather than a period. The following is suggested:

SEQ ID NO: 1.

- In claim 3, the phrase "Sequence ID Nos. 1, 2, 5, 6..." is used. The "No" should be followed by a colon, rather than a period. The following is suggested:
SEQ ID NOS: 1, 2, 5, 6...



The following is a quotation of 35 USC §103 which forms the basis for all obviousness rejections set forth in the Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made, absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103.

Claims 1, 2, 5-7 are rejected under 35 U.S.C. §103 as being unpatentable over Yoshimura (USP 6,090,795).

Yoshimura discloses that the following peptide is chemotactic for monocytes:

X-Pro-Asp-Ala-Ile-Asn-Ala-Pro-Val-Thr-Cys-Cys-Tyr-Asn-Phe-Thr-Asn-Arg-Lys-Ile-Ser-Val-Gln-Arg-Leu-Ala-Ser-Tyr-Arg-Arg-Ile-Thr-Ser-Ser-Lys-Cys-Pro-Lys-Glu-Ala-Val-Ile-Phe-Lys-Thr-Ile-Val-Ala-Lys-Glu-Ile-Cys-Ala-Asp-Pro-Lys-Gln - Lys-Trp-Val-Gln-Asp-Ser-Met-Asp-His-Leu-Asp-Lys-Gln-Thr-Gln-Thr-Pro-Lys-Thr

Instant claim 2 is rejected because SEQ ID NO: 1 (instant application) is a peptide which contains the dipeptide subsequence Arg-Arg. SEQ ID NO: 1 (instant application) also contains the dipeptide subsequence Arg-Ile. Given that the dipeptide subsequence Arg-Arg is "included" in SEQ ID NO: 1 (instant application), claim 2 is rendered obvious.

Thus, the claims are rendered obvious.



Claims 1, 4-8 are rejected under 35 U.S.C. §103 as being unpatentable over Geczy (USP 5,731,166).

Geczy discloses (col 7, line 51) that the peptides of SEQ ID NOS: 2 and 3 are chemotactic for neutrophils. Thus, the claims are rendered obvious.



Claims 1, 2, 4-8 are rejected under 35 U.S.C. §103 as being unpatentable over Carney (USP 6184342).

Carney discloses that the peptides of SEQ ID NOS: 1 - 4 are chemotactic for neutrophils. For example SEQ ID NO:1 (of the patent) is the following:

R-R-P-E-S-K-A-T-N-A-T-L-D-P-R

Claim 2 is also rejected. SEQ ID NO: 1 (instant application) is the following:

Arg-Arg-Arg-Pro-Arg-Pro-Pro-Tyr-Leu-Pro-Arg-Pro-Arg-Pro-Pro-Pro-Phe-
Phe-Pro-Pro-Arg-Leu- Pro-Pro-Arg-Ile-Pro-Pro-Gly-Phe-Pro-Pro-Arg-Phe-
Pro-Pro-Arg-Phe-Pro

As is evident, the peptide of the instant application contains the tripeptide Arg-Arg-Pro. Thus, the claims are rendered obvious.



Claim 1 is rejected under 35 U.S.C. §103 as being unpatentable over Auron (USP

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5,681,933). Auron discloses that IL-1 is chemotactic for leukocytes, and provides the amino acid sequence thereof.

Thus, the claim is rendered obvious.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber, can be reached at 571-272-0925. The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



DAVID LUKTON
PATENT EXAMINER
GROUP 1800